

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SHAWN ANTHONY GONZALEZ,

Plaintiff,

v.

CIV No. 12-834 RB/GBW

TEX A. JOEY, RONALD MARTIN, JAVIER
ARCHULETA, and ROBERT MENDOZA,

Defendants.

**ORDER ADOPTING IN PART MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

Plaintiff is suing Defendants under 42 U.S.C. § 1983 for alleged constitutional and statutory violations relating to (1) the denial of Plaintiff's request to participate in Native American programming, and (2) the confiscation of his composition notebook. *Docs. 13, 14.* Defendants filed a *Martinez* report on November 4, 2014, in which they moved for summary judgment on all of Plaintiff's claims. *Docs. 29, 30.* Magistrate Judge Gregory B. Wormuth ordered supplemental briefing on the Motion for Summary Judgment on May 2, 2014, (*doc. 39*), and briefing was complete on July 8, 2014. *Docs. 40, 41, 42.*

On September 5, 2014, the Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD). *Doc. 44.* He recommended denying Plaintiff's Motion for Writ of Mandamus (*doc. 32*), granting Defendants' Motion for Summary Judgment (*docs. 29, 30*), and dismissing Plaintiff's amended complaint (*docs. 13, 14*) with

prejudice. The Magistrate Judge further recommended denying as moot Plaintiff's Motion for Jury Demand (*doc. 38*).

Plaintiff filed objections to the PFRD on September 16, 2014. *Doc. 45*. His objections contest the Magistrate Judge's recommended finding that Plaintiff does not have a sincerely held belief in Mexicanahuallo¹, and the recommendation that certain of Plaintiff's claims be denied on this basis. Plaintiff does not, however, object to any other portion of the PFRD, and, upon review of the record, I concur with the Magistrate Judge's findings and recommendations on Plaintiff's remaining claims.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition, (*doc. 44*), is ADOPTED IN PART. Plaintiff's Motion for Writ of Mandamus (*doc. 32*) is DENIED. Plaintiff's due process claims, retaliation claims, and equal protection claims against Defendants Martin, Archuleta, and Mendoza are hereby DISMISSED with prejudice. Likewise, Plaintiff's due process claim against Defendant Joey regarding denial of access to the courts is DISMISSED with prejudice.

The Court will hold in abeyance ruling on the claims relating to Plaintiff's sincerely held belief—Plaintiff's free exercise and RLUIPA claims against all Defendants, as well as his equal protection claim against Defendant Joey¹—pending

¹ The Magistrate Judge's recommendation that Plaintiff's equal protection claim against Defendant Joey be dismissed was based on a finding that Plaintiff was not "'similarly situated' to Native Americans who practice Native American religions" because he did not have a sincerely held belief in Mexicanahuallo¹. See *doc. 44* at 28. The recommendation to deny Plaintiff's equal protection claims against Defendants Martin, Archuleta, and Mendoza was unrelated to Plaintiff's beliefs and instead relied on the lack of evidence of discriminatory intent. See *doc. 44* at 29-30. Therefore, Plaintiff's equal protection claim against Defendant Joey will be held in abeyance although his equal protection claims against the remaining Defendants are dismissed.

receipt and consideration of Defendants' response to Plaintiff's objections, as ordered by Judge Wormuth in his September 17, 2014 Order (*doc. 46*). The Court also holds in abeyance ruling on Plaintiff's Motion for Jury Demand (*doc. 38*).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert Zach", is written over a horizontal line.

UNITED STATES DISTRICT JUDGE